No. 234.

APR 5 1901

Brf. of Jones for Appellee (on mo

Filed April 5, 1901.

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1900.

No. 234.

JOHN E. CODLIN, Chairman of the Board of County Commissioners of Colfax County, New Mexico, and MANUEL M. SALAZAR, Clerk of the Board of County Commissioners of Colfax County, New Mexico, *Appellants*,

vs.

CHARLES B. KOHLHOUSER, CHRISTOPHER N. BLACKWELL, ALFRED C. PRICE, and TIMOTHY F. McAULIFFE, *Appellees*.

Appeal from the Supreme Court of New Mexico.

MOTION AND BRIEF OF APPELLEE.

ANDRIEUS A. JONES,
Attorney for Appellees.

GIBSON PRINT, LAW TERMS

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vs.

Charles B. Kohlhousen, et al.,

Appellees.

Now come the appellees in the above entitled cause and move the court to dismiss the writ of error in said cause and for affirmance of the judgment of the Supreme Court of the Territory of New Mexico, for the following reasons, towit:

First:—There is no longer any substantial legal controversy between the parties to said cause.

Second:—Because any judgment which this court might render in said cause could not be made effectual.

Third:—Because the appellees at the time the writ of error was sued out in this cause were not then respectively the chairman and clerk of the board of county commissioners of Colfax County.

In support of this motion the appellees file herewith an affidavit marked Exhibit A.

ANDRIEUS A. JONES,
Attorney for Appellees.

EXHIBIT A.

In the Supreme Court of the United States, October Term, A. D. 1900.

John E. Codlin, Chairman of the Board of County Commissioners of Colfax County, New Mexico, and Manuel M. Salazar, Clerk of the Board of County Commissioners of Colfax County, New Mexico, *Appellants,*

vs.

Charles B. Kohlhousen, et al.,

Appellees.

Territory of New Mexico, } ss.
County of Colfax. }

Christopher N. Blackwell being first duly sworn according to law deposes and says, that he is one of the appellees in the above entitled cause. Affiant further states that John E. Codlin, one of the appellants, ceased to be chairman or a member of the board of county commissioners of Colfax County, New Mexico, in the month of January, 1899; and that Manuel M. Salazar ceased to be clerk of the board of county commissioners of Colfax County, New Mexico, during or prior to the month of March, 1899.

Affiant further states that the bonds of Colfax County, New Mexico, referred to in the transcript of record in this cause were on or before the 9th day of August, A. D. 1898, negotiated and sold for the benefit of said county, and that the proceeds derived therefrom were afterwards used for the benefit of said county in construction of the court house and jail referred to in the transcript of record in this cause; and that said court house and jail were completed on or about the 1st day of January, 1899, and the same have since been used for county purposes and the holding of courts, and

that all of the county officials now have their offices in said building.

CHRISTOPHER N. BLACKWELL.

Subscribed and sworn to before me this 7th day of March, A. D. 1901. R. H. AYERS,
(Notarial Seal.) Notary Public.

BRIEF ON MOTION.

At the time the appeal from the Supreme Court of the Territory of New Mexico was taken in this cause, neither of the appellants was an official of Colfax County, New Mexico, and the bonds referred to in this proceeding were issued and sold for the benefit of Colfax County. The proceeds from these bonds were used in the construction of the court house and jail, and these buildings were being used for county purposes and the holding of courts.

Under this state of facts, it is submitted that the appeal in this cause should be dismissed for the reasons set forth in the motion printed herewith.

"The duty of this court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it. It necessarily follows that when, pending an appeal from the judgment of a lower court, and without any fault of the defendant, an event occurs which renders it impossible for this court, if it should decide the case in favor of the plaintiff, to grant him any effectual relief whatever, the court will not proceed to a formal judgment, but will dismiss the appeal. And such a fact, when not appearing on the record, may be proved by extrinsic evidence. *Lord v. Veazie*, 8 *How.* 251; *Cal-*

ifornia v. San Pablo & Tulare Railroad, 149, U. S. 305."

Mills v. Green, 159 *U. S.* 653.

"The fact that there is no controversy between parties to the record ought, in the interest of a pure administration of justice, to be allowed to be shown at any time before the decision of the case. Any other rule would put it in the power of designing persons to bring up a feigned issue in order to obtain a decision of this court upon a question involving the rights of others who have no opportunity to be heard."

Little v. Bowers, 134 *U. S.* 558.

The bonds which the appellants were required by mandamus in this case to execute having been sold, no one is interested in their validity save the purchasers, and they are not parties to this suit.

BRIEF ON MERITS.

STATEMENT.

In pursuance of the provisions of Chapter VI, of the laws of 1897, a petition was presented to the Board of County Commissioners of Colfax County, requesting that the question of the removal of the county seat from Springer, New Mexico, to Raton, New Mexico, should be submitted to a vote of the electors of said county of Colfax. This petition was in due form and thereafter such question was submitted to the voters of said county at a special election held for that purpose and resulted in favor of granting the petition by an overwhelming majority. After it was thus decided to remove the county-seat from Springer to Raton, the county commissioners and the city council, under and in pursuance of Chapter 33, of the laws of 1897, entered into a contract for the erection in the City of Raton of a court house and jail, the court house to

be used in part by the City of Raton; the city and county each contributing to the construction of the building as provided for in Chapter 33. Under the provisions of these acts for the purpose of erecting these buildings the county commissioners decided to issue bonds, and the chairman of the board of county commissioners and the clerk of the board were instructed and directed to execute the bonds of Colfax county for such purpose. The bonds were prepared in due form, but the chairman of the board of county commissioners and the clerk refused to execute the same as ordered by the board for the reason that the acts of the legislative assembly authorizing the issuance of such bonds were unconstitutional. The appellees then presented their petition for a writ of mandamus to the district court for the county of Colfax, praying that the chairman and clerk of said board should be required to execute such bonds; an alternative writ of mandamus was granted and upon the coming in of the answer of the respondents a hearing was had in the district court and a peremptory writ of mandamus was issued which was thereafter served upon the appellants and obeyed by them. The bonds were executed and turned over to the person designated by the board of county commissioners to receive and dispose of the same for the purpose of constructing such buildings. The bonds have been sold and the buildings completed.

The only reason insisted upon in the lower courts and in this court as to why the peremptory writ of mandamus should not have been granted was that these acts of the Territorial legislature were unconstitutional, being in contravention of the act of Congress, approved July 30th, 1886. The respective acts so far as pertinent to the issues in this case are as follows:

"CHAPTER SIX.

"Section 1. Wherever the citizens of any county in this Territory shall present a petition to the Board of County Commissioners, signed by qualified electors of said county, equal in number to at least one half the legal votes cast at the last preceding general election: asking for the removal of the county seat of said county to some other designated place, which petition shall be duly recorded in the records of said county, said Board shall make an order directing that the proposition to remove the county seat to the place named in the petition be submitted to a vote of the qualified electors of said county, at the next general election, if the same is to occur within one year from the time of presenting said petition, otherwise at a special election to be called for that purpose within six weeks from the date of presenting said petition:

"*Provided*, That before making such order the said Commissioners shall require a written guaranty from responsible citizens of the place to which the petitioners desire the county seat removed, that they will provide free of cost to the county, a suitable site and sufficient ground for a court house and jail, and that they will pay to the county treasurer a sum not less than eight thousand dollars, to be used in constructing such court house and jail, in the event that the proposition for removal shall receive a majority of the votes cast at such election; and

"*Provided further*, That the city, town or village named in the petition shall be at least twenty miles distant and of a larger population than the county seat of said county; and that no proposition to remove a county seat from a city, town or village, situated on a railroad to one not so situated, shall be entertained or voted, and that no vote shall be ordered on substantially the same proposition oftener than once in ten years."

"CHAPTER THIRTY-THREE.

"Section 1. Hereafter, when the county seat of any county in this Territory shall be established at any incorporated city and the council of such city shall desire to join with said county in the erection of a public building to be used as a court house and jail, as well as for city purposes, such council may issue bonds of such city for the purpose of such construction and the purchase of suitable grounds for such buildings, not to exceed in amount 3 per cent. upon the total value of all the taxable property within the limits of such city, as shown by the last preceding general assessment for the purpose of taxation: *Provided*, The total indebtedness of such city, including such bonds, shall not exceed four per centum of the total value of all taxable property within the limits of such city, according to such last preceding general assessment."

ACT OF CONGRESS.

"*Be it enacted, etc.*, That the legislatures of the Territories of the United States, now or hereafter to be organized, shall not pass local or special laws in any of the following enumerated cases, that is to say:

* * * *

Locating or changing county seats.

Regulating county and township affairs.

* * * *

In all other cases where a general law can be made applicable, no special law shall be enacted in any of the Territories of the United States by the Territorial legislatures thereof.

* * * *

ARGUMENT AND AUTHORITIES.

On behalf of the appellees it is submitted that notwithstanding the Act of Congress of July 30,

1886, the legislature of the Territory of New Mexico has a right to enact laws regarding the removal of county seats which may not apply to all the county seats in the Territory; that the legislature may specify any conditions or circumstances as a basis for classification provided they are germane to the subject matter of the legislation; that the difference in the situation and circumstances and needs which call for the formation of a class was within the exclusive control of the legislature, and that the provisions of the acts in question are in conformity with these principles of law. It is further submitted that Chapter 33 is not an act "regulating county affairs," and that whether a general act could be made applicable to the circumstances and conditions is a matter to be determined by the legislature and is not reviewable by the courts. These various propositions will now be discussed; and, if sustained, there was no error in the granting of the peremptory writ of mandamus.

I.

The law is not local or special because it does not apply to the removal of all county seats.

Counsel for the appellants, in his brief, frequently makes the remark that the acts in question apply only to the county of Colfax and can never be made to apply to any other counties in the Territory. This statement may or may not be true as applied to the existing conditions in the Territory, but differences of opinion as to these facts certainly exist. I am informed that in Lincoln county, where the town of Lincoln is the county seat that the town of White Oaks, which is more than twenty miles distant, has a larger population, and under the provisions of this act the county seat of that county might be removed to the town of White Oaks. I am also informed that in the county of

Guadalupe, there is the town of Anton Chico which has a larger population than Puerto de Luna, the present county seat, and it is more than twenty miles distant. If it is thus intended to convey the idea that the act can never in the future be made to apply to other counties, I respectfully submit that the contention on the part of appellants is untenable. It is quite probable that the circumstances designated in the act in question with reference to the removal of county seats might reasonably be expected to exist within a comparatively short period in several of the counties of the Territory; but, even if such contention be true, this does not necessarily render the acts in question special or local within the meaning of the act of congress. It has been repeatedly held that, although an act may apply to only one city or county, this alone does not render it special or local legislation. In the case of *Edmunds vs. Herbrandson*, 50 N. W., 973, the supreme court of North Dakota, in discussing this proposition used the following language:

"It is one thing to assert that all except a single object will be forever kept from the class by circumstances, and another and entirely different thing to attempt to exclude all others by the very terms of the law. A law applicable to all the cities of the state of New York having not less than a million population may never embrace any other city. But, the classification being reasonable, it ought not to be prohibited because no other city may ever enter the class."

In *Fellows vs. Walker*, 39 Fed. Rep., 651, the circuit court of the Northern District of Ohio says:

"The constitutionality of the act is denied because it is said to be a special act conferring corporate powers, that it is special because the city of Toledo is the only city of the third grade of the first class in the State of Ohio, and the only city to which this act is or can be

applicable. But this objection cannot be sustained. It is well settled by authority in Ohio, that the classification of municipal corporations is valid, and that legislation which is applicable to a class is general, although there may be at that time but one city in that class."

Other cases announcing a similar doctrine might be cited, but it is deemed unnecessary, as all of the decided cases hold this proposition not to be a decisive test as to whether a law is local or special. If the act in question is broad enough to include all counties which may hereafter come within the circumstances and differences which form the basis of classification it is not local or special within the meaning of the act of Congress.

II

Classification based on circumstances, relations and conditions which are natural, reasonable and germane to the subject matter of a legislative act is not special legislation within the meaning of the act of Congress.

The courts have recognized various circumstances and conditions as forming a proper basis for classification and legislation. A great number of acts have been passed classifying cities with reference to population but this is only one method and any others may be adopted which naturally arise out of the subject matter within the legislative mind.

In *Harwood vs. Wentworth*, 162 U. S. 547, the assessed valuation of property in the respective counties in the Territory of Arizona was made the basis of classification in fixing the salaries of county officers.

In the case of *Commissioners vs. McMullin*, 25 N. E. 677, the existence of park commissioners was made the basis of classification. The court there said:

"If it be true, as suggested, that the act is applicable to the conditions existing in a single city in the state.

that fact does not necessarily render it local or special legislation. It is general in its terms and applies to all cities of the state which at the time of its passage had parks under the control of park commissioners, or that might at any time thereafter so have parks. If, because only a single city had such parks, an act general in its application to all cities, would be local or special legislation no valid act could be passed affecting such existing parks."

It will be observed from the foregoing cases, and others cited in the brief of counsel for appellants that no particular circumstances have been suggested or designated by the courts as a criterion from which to judge whether any given act is special or not, but the doctrine which is upheld by all the courts is substantially that stated by the New Jersey court in the cases cited by counsel for appellants and quoted in his brief. Many other cases of a similar import can be found.

The doctrine as announced by the Minnesota court and quoted in the case of *State vs. Spaulde*, 34 N. W. 165, and which the courts have upheld, is as follows:

"A law, to be general, need not operate alike upon all the inhabitants of the state, or all the cities, or all the villages, in the state. To require that would be utterly impracticable. A law is general which operates alike upon all the inhabitants of all the cities, or all the villages, or other subjects of a class of such subjects of legislation. That for the purpose of legislation it may be necessary to make, and that the legislature may make such classification, is undoubted. The only practical limitation to this power is that the classification shall be based upon some natural reason, some reason suggested by necessity; by some difference in the situation and circumstances of the subjects classified suggesting the necessity of different legislation with respect to them—and

shall not be merely arbitrary, with no apparent reason except a desire to evade under the forms of a general law, the constitutional inhibition of special legislation."

The principle thus laid down I believe to be the one which has controlled the courts in various decisions where the question of special legislation has been raised under constitutional provisions similar to the act of congress and have upheld classifications based on various circumstances and conditions insisting only upon their being reasonable and germane to the subject-matter of the legislative act.

In the case of *Edmunds vs. Herbrandson, supra* the court had under consideration an act for the removal of county seats which provided "that nothing in this act shall permit the removal to or locating of a county seat of any county at a place not located upon a line of railroad, nor wherein the court house and jail *nave* erected exceed in value the sum of thirty-five thousand dollars." In discussing this provision of the statute the court upheld the provision which required that the county seat should not be changed to a place not located upon a line of railroad, and also held that if the limitation of thirty-five thousand dollars in value had not been restricted to counties having at the time of the passage of the act improvements of such value that it would not have been obnoxious to the constitutional provision.

The supreme court of Kansas, in *State vs. City of Kansas City*, 31 Pac. Rep. 1101, upheld an act which reads as follows:

"Section 1. Whenever two or more cities, neither of which is a city of the first class, lying adjacent to each other, and not more than three-fourths of one mile apart, have attained, or shall hereafter attain, an aggregate population of fifteen thousand or upwards,

such cities shall be consolidated, and become one city, and be governed and regulated by the laws relating to cities of the first class, except as to matters provided for in this act."

The court in passing upon this statute says:

"No previous law was adequate for this purpose. Is the classification fair, and the distinction from other laws substantial and necessary? Can it have general application upon all municipalities which naturally come within its provisions? The act simply provides for the consolidation of adjacent cities of the lower classes into one of the first class. We are of opinion that the classification is not an unnatural one, and that the distinction is substantial and reasonable."

In re. Church, 92 N. Y. 4.

III.

The Legislature is the sole judge of what reasonable and natural conditions and circumstances shall form the basis of classification.

It must be evident to the court that good policy would not justify the passage of an act in New Mexico which would authorize or permit the removal of all county seats in the Territory, but circumstances might arise which would make it advisable to authorize and permit the county seats in some counties to be re-located. As to what circumstances and conditions shall make such legislation advisable I believe the courts have universally maintained should rest solely with the legislature.

In the case of *State vs. Donovan*, 15 Pac. Rep. 785 the Nevada court in passing upon the validity of a statute providing for the issuance of gambling license under certain restrictions and making the law applicable only to certain cities, said:

"In the interest of public morals, as a matter of pub-

lic policy, and a protection to the youth and unwary, it must be admited not only that the legislature had the power, but that it was its duty, to designate the places where the games could be carried on without being exposed to public view. Whether they pursued the wisest course to accomplish this purpose was a question exclusively within the wisdom and discretion of the legislature."

In the supreme court of Illinois in the case of *Cummings vs. City of Chicago*, 33 N. E., 855, the court uses this language:

"The legislature, for reasons appearing satisfactory to it, saw fit not to apply to the smaller assessments in the larger cities of the state the somewhat cumbersome mode of collecting the same provided for in the act under consideration. Whether this was wise or unwise is a question for legislative consideration. Reasons for the distinction existing in the legislative contemplation, it was lawful for the legislature to thus discriminate, if enacted into a general law, uniform in its application to all cities of the state similarly situated."

The supreme court of Kansas in *State vs. City of Kansas City*, 31 Pac. Rep. 1102, used this language:

"It belongs to the legislature to make the classification, and, while it cannot so classify them as to make the law special in its application and results, yet many classes may properly be made. It need not be restricted to the population of municipalities, but it would seem that it might be based on the conduct or condition of the people residents therein."

The supreme court of Pennsylvania, *Lloyd vs. Smith* 35 Atlantic Rep. 200, used this language:

"Classification of counties is therefore as permissible as classification of cities, and the legislature may determine what differences in situation, circumstances, and needs call for a difference of class, subject to the super-

vision of the courts as the final interpreters of the constitution, to see that it is actually classification, and not special legislation under that guise. The presumption is always in favor of the legislative command, and it must prevail, unless clearly transgressing the constitutional prohibition."

I do not mean to contend that the legislature may adopt any arbitrary basis for classification such as used for illustration in some of the cases, but I do contend that the legislature has the sole right to select the distinguishing characteristics which shall govern the classification, provided only, that the circumstances and conditions so selected shall be germane to the subject matter of the legislation.

IV.

Distinguishing characteristics which formed the basis of classification by the legislature in the acts under consideration were natural, reasonable and germane.

The particular clause in Chapter VI, which counsel for appellants insist is special legislation and unconstitutional is that part which is as follows:

"*Provided further*, That the city, town or village named in the petition shall be at least twenty miles distant and of a larger population than the then county seat of said county; and that no proposition to remove a county seat from a city, town or village, situated on a railroad to one not so situated, shall be entertained or voted upon."

In passing a law for the removal of county seats the legislature necessarily took into consideration the facts and circumstances which would justify such removal. Naturally the legislature would desire that the county seat should be located at a point most convenient to the inhabitants of the county and in a large center of popu-

lation. It cannot be claimed that it would be advisable or reasonable to remove the county seat from a large city or town to a smaller one. The expenses of conducting the courts, summoning of jurors, witness fees, and the incarceration of committed suspects depends largely upon the location of the county seat. If the county seat is located in a place having a large population these expenses would necessarily be less than if the county seat were not so located. In any event this was a question which should have been considered by the legislature in the passage of any act regulating the removal of county seats. It is natural and germane to the subject matter of such legislation, and the legislative will is, in this respect, supreme.

Again, the act provides that the county seat shall not be removed to a place less than twenty miles distant. It is apparent that it would not be advisable to remove county seats unless there should be some substantial reason for such removal. The legislature doubtless deemed that it would not be wise to pass an act which would permit the removal of the county seat from West Las Vegas to East Las Vegas, a distance of one mile or less. In such a case the advantages derived from the relocation of the county seat would not off-set the disadvantages which would arise from the abandonment of the county buildings and other county property. The difference in distance would not reduce the expenses of holding courts, nor would the additional convenience thus afforded the citizens of the county over-balance the expenses and disadvantages which would arise from the removal of a county seat for only such a short distance. At any rate it must appear to the judicial mind that in prescribing the conditions under which county seats might be moved that distance was a proper one to be taken into consideration; and, if distance should be at all considered, then the distance adopted by the

legislature is conclusive. This is not the first time that distance has formed one of the distinguishing characteristics in classification. In the case of *State vs. City of Kansas City*, 31 Pac. Rep., 1101, the court held that a distance of three-fourths of a mile was a proper one to be fixed by the legislature in specifying what cities might consolidate. It was necessary for the legislature to designate in some manner how close together cities must be before they should be given the right to consolidate. Cities distant from each other, according to the legislative view, should not be permitted to consolidate; nor, on the other hand, did the legislature consider that it was necessary that the cities should be absolutely contiguous before they were permitted to consolidate, and so the legislature, considering all the facts and circumstances of the case, decided that they should be not more than three-fourths of one mile apart, and the court upheld this view. In the Territory of New Mexico, where the counties are large and the centers of population distant from each other, I do not believe that it can be claimed that a distance of twenty miles was unreasonable when applied to the re-location of county seats.

The next characteristic to which the appellants take exception is that which prohibits the removal of the county seat from a place on a railroad to a place not on a railroad. Accessibility should always be taken into consideration in the location of a county seat, and it is a matter of general knowledge that county seats are located upon a line of railroad wherever practicable. Where the county seat is thus located the business of the courts can be more expeditiously and economically conducted, and in this age of railroads it seems to me that it would be the height of folly to remove a county seat from a railroad to a place not so situated. Such a provision was expressly held to be a proper basis for

classification in the case of *Edmunds vs. Herbrandson, supra.*

The only other provisions contained in the act under consideration is that which requires the citizens of the place to which it is desired to remove the county seat to provide free of cost to the county a suitable site for a court house and jail and to pay a sum of not less than eight thousand dollars to be used in the construction of a new court house and jail. The court will take judicial notice of the fact that in all cases there must be large expense attending the removal of a county seat. It is also a matter of common knowledge that the location of a county seat in any city or town tends to enhance the value of property. For this enhanced value I do not believe it can be successfully contended that it was unreasonable in the legislature to require that the site for the new court house and jail should be donated to the county, and that the citizens of the place to which the county seat should be removed should make some contribution to the construction of the new county buildings; and, having a right to ask for some contribution, it was within the legislative discretion to say how much. Again, it might well be contended that this requirement is not a basis for classification, but simply a condition precedent to the removal of the county seat of any county. Certainly it is one which is in the interest of the general taxpayers of the county, and no one can complain if the citizens of the new county seat voluntarily make the contribution.

It is contended by counsel for appellants that Chapter XXXIII is special legislation, because it is limited to conditions which may come into existence after the passage of the act and does not include similar conditions which may exist at the time or prior to the passage of the act. The language objected to is as follows:

"Hereafter, when the county seat of any county in this Territory, shall be established at any incorporated city and the council of such city shall desire to join with said county in the erection of a public building to be used as a court house and jail, as well as for city purposes, such council may issue bonds."

Counsel for appellants insists that the word "hereafter" qualifies the verb "established" and contends that the section can only apply to counties whose county seats shall be hereafter established at an incorporated city. On a close examination of this language it must be apparent that the adverb "hereafter" was intended to and does modify the verb "may issue," and that the act simply means that under certain conditions the incorporated cities referred to in the act may hereafter issue bonds provided that certain conditions exist. So that, the language in question properly paraphrased reads, "Hereafter the said council may issue bonds when the county seat of any county in this Territory shall be established at such incorporated city, and the council of such city desire to join with said county in the erection of a public building to be used as a court house and jail as well as for city purposes." The predicate "shall be established" does not necessarily imply a future establishment, that is, an establishment after the passage of the act, and may well mean that at any time when the conditions so exist that the county seat is established in any incorporated city, then bonds may issue. Such a construction it is believed does not do violence to the language used. It is a reasonable construction, and where two or more reasonable constructions can be given to an act that will be given to it which will sustain the constitutionality of it, if it would otherwise be unconstitutional.

"Whenever an act of the legislature can be so construed and applied as to avoid a conflict with the con-

stitution, and give it the force of law, such construction will be adopted by the court."

Peel Splint Coal Co. vs. State, 15 S. E. 1000 (W. Va.)

Owen vs. City of Sioux City, 59 N. W. 5.

If, however, this act does apply only to cities in which county seats are established after the passage of the act, still under the authorities it is not special legislation. A statute involving the same principle was passed upon by the supreme court of Iowa in the case of *Owen vs. The City of Sioux City, supra.* The act there before the court provided:

"That cities of the first class that have been or may be organized since January 1st, 1881, shall have power to open, widen, extend, * * * * any street within the limits of the city."

It was especially contended that the act was special legislation and even if a general law that it did not have a uniform operation, because the act by its terms limited its operation to cities of the same class "organized since January 1st, 1881."

After discussing the situation in the state of Iowa, the court sums up the question by saying:

"We have, then, this situation: The original act specified a date as a means of classifying the cities, of the grade named, that are and are not to be affected by it. The difference in population which, as a fact, if specified in the act, would have served as a legal basis of classification, really existed, though not specified; and the query is presented, will the act be declared unconstitutional, when facts are judicially known to exist that would be a legal basis for classification, because a date is used as a basis, and not such facts? That the legislature relied upon the date as a reason for its acts in any other sense than as it served as a means by which the law was made to meet the conditions and

circumstances leading to its enactment no one can believe. Of course the law was not made because of the date. It was made to meet conditions and wants, existing or anticipated, of a class of cities, and the date was but the separating point whereby other cities were excluded from the operations of the law."

The doctrine of this case is also supported by the supreme court of Illinois in the case of *Potwin vs. Johnson*, 108, Ill, 80.

Applying the principle of these decisions to the facts and circumstances as they existed in New Mexico at the time of the passage of Chapter XXXIII, it will be observed that the legislature did not act because of the date to which the statute refers, but with reference to and because of the conditions as they existed in the Territory at that time. This legislature knew and this court will take judicial knowledge of the fact that in the incorporated cities of Santa Fe, Socorro and Silver City, being the only incorporated cities in the Territory of New Mexico where county seats were located, there already existed county court houses and jails and it would be decidedly unadvisable to permit such cities to join with their respective counties in the construction of new court houses and jails or buildings to be used for such purposes as well as city purposes, and in the language of the Iowa court of course the law was not made because of the date, "it was made to meet conditions and wants, existing or anticipated, of a class of cities, and the date was but the separating point whereby other cities were excluded from the operations of the law."

Again, if the act means what counsel for appellants contends, it does not exclude any of the cities where county seats are re-located from the provisions of the act. The court will judicially notice that it was at the same session of the legislature when the only

act ever passed in the Territory was enacted which authorized the removal of county seats, or which authorized the establishment of county seats. Theretofore all county seats had been established by special act of the legislature, and during the time intervening between the passage of the two acts it was impossible for any county to have removed its county seat or established its county seat within any incorporated city.

V.

Chapter XXXIII is not an act regulating county affairs within the meaning of the act of Congress.

Chapter XXXIII is an act which governs one transaction of a county or city. It relates only to the construction of a court house and jail. It does not deal with the ordinary business or affairs of the county. It is an extraordinary act. It is not a transaction with which the officers of the county are usually permitted to deal. Under such circumstances it is clearly not an act regulating county affairs. The words "county affairs" as thus used relate to the ordinary and usual business of the county. In the state of Indiana the constitution prohibited special legislation "regulating county business." The word "business" as used in this connection is synonymous with the word "affairs." The constitution of Indiana did not expressly prohibit special legislation regarding the removal of county seats, and a special act was passed for the removal of a county seat, and it was contended that it was obnoxious to the constitutional provision preventing special legislation regulating county business. The supreme court of Indiana disposing of the case of *Mode vs. Beasley*, 42 N. E. 730, says:

"It remains to determine whether the act in question providing for county-seat removal is a subject embraced in section 22 among the 17 in which the inhibi-

tion is absolute, and in which the legislature has no discretion or right of judgment. One of the 17 subjects embraced in that section, and thereby put beyond the power of the legislature to pass a local law upon it, is the subject of regulating county and township business. The appellants contend that the subject of removal of a county seat falls within the subject designated by the words regulating county and township business; that it is county business. It was held, in effect, that it was not county business, in *Thomas vs. Board, supra.* The ruling upon that point in that case has never been questioned. In *Mount vs. State, supra,* the court reaffirmed the same doctrine in the following language: "Township business cannot be regulated by special or local laws, but a law requiring reimbursement to an officer is not a regulation affecting township business. It is an act granting special relief in a particular case. The term, 'business,' as employed in the constitution does not apply to acts granting relief in particular and extraordinary cases. The term 'business,' when applied to a public corporation, signifies the conduct of the usual affairs of the corporation and the conduct of such affairs as commonly engage the attention of township and county officers. It does not mean the performance of an act which can be done only in a particular case, and by authority of a special law. This statement of the law is, we think correct, and especially applicable to the case now before us, and hence, though the act of 1880 be local and special, as we think it is, yet, being on a subject not embraced in section 22 of article 4 of the constitution, the determination of the legislature, by enacting the law, that one of general and uniform operation throughout the state could not be made applicable, is final and conclusive upon the courts."

Mount, trustee, vs. State, 90 Ind. 31.

VI.

Chapter XXXIII, if special, is not obnoxious to the Act of Congress which provides that no special law shall be enacted in any case where a general law can be made applicable.

If Chapter XXXIII is not an act regulating county affairs within the meaning of the Act of Congress it will not be declared unconstitutional or void, although a special act, by reason of anything contained in the Act of Congress which prohibits the enactment of special laws where general laws can be made applicable. It is well settled by authority that under constitutional provisions similar to this Act of Congress, the question as to whether a general law can be made applicable or not is one exclusively for the legislature and by the passage of a special act a conclusive presumption is raised that in the opinion of the legislature a general law was not applicable.

Mode vs. Beasley, 42 N. E. 729.

Eichholtz, et al. vs. Martin, County Clerk, et al. 36 Pac. Rep. (Kas.) 1064.

People, ex rel. Graves vs. McFadden, et al. 22 Pac. Rep. (Cal.) 851.

Brown vs. City of Denver, et al. 3 Pac. Rep. 455.

Keel, et al. vs. Board of Directors of St. Francis Levee District, et al. 27 S. W. (Ark.) 590.

Powell vs. Durden, 31 S. W. Rep. (Ark.) 740.

Edmunds, et al. vs. Herbrandson, et al. 50 N. W. 970 at 974.

Respectfully submitted,

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